

STATE OF WASHINGTON



**OFFICE OF
INSURANCE COMMISSIONER**

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| In the Matter of |) | |
| |) | No. D 05-109 |
| Pemco Life Insurance |) | |
| Company, |) | Consent Order Imposing a Fine |
| |) | |
| An Authorized Insurer |) | |
| |) | |

FINDINGS OF FACT

1. Pemco Life Insurance Company ("Pemco Life" or "Company" hereafter) is a domestic insurance company authorized to transact insurance in the state of Washington in the lines of life and disability insurance.
2. The Office of the Insurance Commissioner (OIC) conducted a market conduct examination of Pemco Life for the time period January 1, 2001, through September 30, 2002. The examination included areas of advertising, complaints, policy replacements, policy form filing, disability/waiver of premium claims, agent activity, underwriting and policy issuance, in force policy administration, and death claims.
3. The report on the market conduct examination of Pemco Life was adopted by the Insurance Commissioner by Order Adopting Report of Market Conduct Examination No. G-04-63, entered June 29, 2004, which order is final.
4. Pursuant to RCW 48.23A.040(1), life insurance illustrations of nonguaranteed elements must include a statement indicating that the benefits and values are not guaranteed, that actual results may be more or less favorable, and that the assumptions used are subject to change by the insurer, and RCW 48.23A.040(5)(a) requires that such illustrations provide certain information for each year in which the premium is to change. OIC examiners reviewed two policy illustrations, Pemco Life's whole life product illustration and its Secure Term illustration. The whole life illustration did not contain a statement regarding nonguaranteed elements as required by RCW 48.23A.040(1) and the Secure Term illustration did not show the year in which premiums are scheduled to change as required by RCW 48.23A.040(5)(a).

5. RCW 48.23A.060(1)(a) and (b) require that illustrations be signed by the applicant and that revised illustrations be sent to and signed by the applicant if the policy is issued other than as applied for. Of fifty files reviewed, four did not contain a copy of the illustrations that had been used, thirty contained revised illustrations that were not labeled as such and that were not signed and dated by the applicant and producer or other authorized company representative, and twenty-three contained illustrations that were not been signed by the applicant.
6. Where replacement of another policy is involved, WAC 284-23-455(4) requires the replacing insurer to provide written notice of the insured's right to request an unconditional refund of all premiums paid within twenty days of delivery of the policy. OIC's examiners reviewed 39 files involving Pemco Life replacement policies none of which contained the refund right notice required by WAC 284-23-455(4).
7. WAC 284-23-455(2)(b) requires that within three days of receiving the application a replacing insurer provide written notice to the existing insurer of the details of the proposed policy or annuity. Thirty-nine files involving replacement policies were examined, nine of which contained replacement notices to the existing carrier that were sent more than three days after the application was received and twenty-four of which contained no replacement notice to the existing carrier at all.
8. WAC 284-23-455(1) requires that every broker or agent in a life insurance or annuity sale to sign a statement as whether replacement is or may be involved in the transaction. Of one hundred fifty-three files reviewed, eighty-nine contained no statement by the broker or agent indicating whether or not replacement was involved.
9. WAC 284-23-090 requires life insurers to keep a complete advertising file for a period of four years or until the next regular report on examination of the insurer, whichever is longer. In response to the OIC examiners' request, the Company listed nine items in its advertising file. In reviewing the advertisements and through other sections of the examination, the examiners found nine additional advertising items that were not included in the advertising file.
10. RCW 48.05.280 requires insurers to keep full and adequate accounts and records of its transactions and affairs. The examiners found misfiled originals scanned into the wrong files, only one side of two-sided forms that had been scanned and the top or bottom of pages that had been cut off. In addition, the examiners found thirty-four incomplete files in the underwriting sample reviewed, ninety-seven incomplete files in the policy replacement sample, five incomplete files in the policy administration sample, and two incomplete files in the disability waiver of premium sample. In addition, two files were missing from the policy address changes sample, two files were missing from the policy beneficiary changes sample, and two files were missing from the policy reinstatements and terminations sample. Of a total of 452 files reviewed, one hundred forty-four were incomplete or missing.
11. RCW 48.18.070(1) prohibits altering of insurance applications except by the applicant or with the applicant's written consent. Of fifty files reviewed, nine contained alterations to the application that had not been initialed or approved in writing by the applicant.

12. RCW 48.30.040 and WAC 284-23-040 prohibit the use of misleading or deceptive advertising by insurers. Of the nineteen advertising items discovered by the examiners, two dated November 2001 and 2002, respectively, cited a statistic relative to the average American's amount of life insurance relative to disposable income. The statistic was derived from a 1994 Life Insurance Facts book published by the American Council of Life Insurers. This book is published annually and the quoted statistic was outdated and misleading.

13. RCW 48.30.050 and WAC 284-23-060 require advertising materials to give the insurer's full name and home office. One of the nineteen advertising items did not include the full name of the Company and did not give the location of the Company's home office.

14. WAC 284-23-450(3) requires as part of a life insurance or annuity application a signed statement by the applicant as to whether the proposed insurance or annuity will replace other insurance or annuities. In eight of one hundred fifty-three files reviewed, the applicant had failed to answer the "replacement" question on the application.

15. RCW 48.18.100(1) requires life insurers to file its application forms and obtain approval from the commissioner prior to use. Following approval of one application form, the Company made changes to the form and continued its use with the changes without filing the changes with the OIC.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.

2. The Company's failures to include in policy illustrations a statement that benefits and values are not guaranteed, that actual results maybe more or less favorable, and that assumptions used are subject to change by the insurer to change violated RCW 48.23A.040(1)(l).

3. The Company's failures to identify in policy illustrations the years in which premiums are to change violated RCW 48.23A.040(5)(a).

4. The Company's failures to require and obtain illustrations and revised illustrations that had been signed by applicants violated RCW 48.23A.060(1)(a) and (b).

5. The Company's failures to send written notices to its insureds of their right to request unconditional refunds within twenty days of delivery of replacement insurance policies violated WAC 284-23-455(4).

6. The Company's failures to provide timely written notice to existing insurers of the details of the Company's proposed replacement policies violated WAC 284-23-455(2)(b).

7. The Company's failures to require or obtain signed agent statements as to whether or not replacement was or might be involved in transactions violated WAC 284-23-455(1).
8. The Company's failures to keep a complete advertising file violated WAC 284-23-090.
9. The Company's failures to keep full and adequate accounts and records of its transactions and affairs violated RCW 48.05.280.
10. The Company's failures to require and obtain applicants' written consent to application alterations violated RCW 48.18.070(1).
11. The Company's use of outdated and misleading or deceptive statistics in its advertising violated RCW 48.30.040 and WAC 284-23-040.
12. The Company's failure to give its full name and home office location in advertising materials violated RCW 48.30.050 and WAC 284-23-060.
13. The Company's failures to require and obtain applicants' signed statements as to whether the proposed insurance would replace other insurance or annuities violated WAC 284-23-450(3).
14. The Company's use of unfiled and unapproved changes to its application forms violated RCW 48.18.100(1).

CONSENT TO ORDER

NOW, THEREFORE, Pemco Life Insurance Company consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of Pemco's payment of a fine, its voluntary payment of interest, and such other terms and conditions as are set forth below:

1. Pemco Life Insurance Company consents to entry of the foregoing Findings of Fact and Conclusions of Law. Pemco Life Insurance Company consents to the entry of this Order and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order.
2. Within thirty days of the entry of this Order, Pemco Life Insurance Company agrees to pay to the OIC a fine in the amount of \$50,000, of which \$30,000 is suspended for a period of two years on condition that Pemco Life Insurance Company shall not violate the provisions of the Washington State Insurance Code and Washington Administrative Code which are the subject of this Order and on condition that Pemco carry out the provisions of, and fully comply with, the Compliance Plan set forth in Exhibit A.

3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of the Company's certificate of authority and for the recovery of the full fine, including the suspended portion.

4. Pemco Life Insurance Company understands and agrees that failure to comply with the statutes and regulations which are the subject of this Order during the two-year period following entry of this Order or failure to comply with the Compliance Plan set forth in Exhibit A shall constitute grounds for recovery of the suspended portion of the fine. Failure to comply with the Compliance Plan set forth in Exhibit A shall constitute a per se violation of the laws of the State of Washington and be subject to such further enforcement as the Commissioner deems necessary in the circumstances.

EXECUTED this ____ day of _____, 2005.

PEMCO LIFE INSURANCE COMPANY

By: _____

Printed Name: _____

Printed Corporate Title: _____

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Pemco Life Insurance Company is ordered to pay a fine in the amount of \$50,000, of which amount the sum of \$30,000 is suspended upon the condition that the Company fully comply with the laws and regulations of the State of Washington which are the subject of this Order for the next two years and upon the condition that the Company fully carry out its obligations under the Compliance Plan attached hereto as Exhibit A;

2. The Company shall comply with and carry out the Compliance Plan set forth in Exhibit A hereto, which Compliance Plan is hereby incorporated into this Order by reference as though fully set forth herein; and

3. The Company's failure to pay the fine within the time limit set forth above shall result in the revocation of the insurer's Certificate of Authority, and in the recovery of both the suspended and unsuspended amounts of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this ____ day of _____, 2005.

MIKE KREIDLER,
Insurance Commissioner

By: _____
Charles D. Brown
Staff Attorney
Legal Affairs Division